

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 9

In the Matter of

OCESSEA/AFSCME LOCAL 11

Employer

and

Case 9-UC-494

PUBLIC EMPLOYEES REPRESENTATIVE
UNION, PERU

Petitioner

REGIONAL DIRECTOR'S DECISION AND
ORDER DISMISSING PETITION

I. INTRODUCTION

The Employer, a non-profit corporation, is a labor organization, affiliated with the American Federation of State, County, and Municipal Employees (AFSCME) International Union. The Petitioner is the recognized bargaining representative for a unit consisting of “all regular full-time and part-time employees of the Employer in 27 classifications, but excluding supervisory, confidential, managerial and all other employees.” There are approximately 65 employees included within the Petitioner’s bargaining unit.

The Petitioner seeks to clarify the existing bargaining unit by accreting the position of Internal Organizing/Political Mobilizing Manager, (hereinafter “IOPMM”) into the bargaining unit.^{1/} The Petitioner asserts that the IOPMM is a newly created position that shares a community of interest with other bargaining unit job classifications and thus should be accreted into the unit. The Employer maintains that the IOPMM is merely a new job title for the previously existing position of Organizing Administrator, a non-bargaining unit position and, in any event, the IOPMM is a supervisory, managerial and/or confidential employee and must be excluded from the unit.

A hearing officer of the National Labor Relations Board held a hearing on the issues raised by the Petitioner. I have fully considered the record evidence and the arguments of the parties made both at hearing and in their post-hearing briefs. I find, based on the record as a whole, that the IOPMM is a newly created position. However, I have concluded that this position possesses supervisory indicia within the meaning of Section 2(11) of the Act. In view of this conclusion, I find it unnecessary to decide whether the IOPMM, as contended by the Employer, is also a managerial or confidential employee. Accordingly I find that the existing

^{1/} This position is located at the Employer’s headquarters at 390 Worthington Road, Westerville, Ohio 43082.

bargaining unit should not be clarified to include the IOPMM. In explaining how I came to my determination on this issue, I will first describe the Employer's operations and discuss the duties of the position at issue, then set forth the applicable legal precedent, and finally analyze the issue in relation to that precedent.

II. FACTUAL OVERVIEW OF THE EMPLOYER'S OPERATIONS

The Employer's Operations and Workforce:

Ed Parks serves as the Employer's President, an elected position, and oversees the Employer's daily operations. He is assisted by various managerial and supervisory staff including Carol Bowshier, Director of Administrative Services & Health Care Policy; Sharon Hillis, Human Resources Director; Sally Mecking, Director of Communications; Sandra Bell, General Counsel; Thomas Zebbar, IT Manager; Mike Jones, Director of Education; and four Operations Directors, David Johnson, Don Conley, Tim Shafer and Bruce Wyngaard, who directly supervise the staff representatives who are bargaining unit employees. Staff representatives are primarily engaged in representing and servicing the Employer's members who are employed in various capacities by the State of Ohio. In conjunction with these activities, all employees, whether included or excluded from the bargaining unit, are involved in "organizing" and "political mobilization efforts." The Employer has a political action committee, Public Employees Organized to Promote Legislative Equality (PEOPLE), which seeks to influence legislation and encourage membership in the Employer. In addition, the Employer has a "Next Wave Initiative," a program designed to appeal to and recruit "younger members" for involvement in the Employer.

In response to AFSCME's 21st Century Report, a strategic plan to assist the International's affiliates in responding to workplace challenges, the Employer created the Internal Organizing Task Force, a subcommittee of the Employer's Board of Directors. This group includes various members of the Employer's staff and management, such as the Operations Directors, and seeks to implement AFSCME's recommendations contained in the 21st Century Report. In addition, the Employer has a Policy Team comprised of its various department heads who meet on a monthly basis to develop and implement daily procedural requirements for the Employer's operations and policy and performance measures for the staff. The Policy Team executes the Board of Directors' directives, and reviews and discusses legislative policies. The IOPMM has been assigned to both the Internal Organizing Task Force and the Policy Team.

The Employer asserts that in order to implement recent recommendations of the Internal Organizing Task Force, certain modifications were made to an existing but vacant position, the Organizing Administrator, and the title was changed to IOPMM to accurately reflect the position's updated duties. The Organizing Administrator, a non-bargaining unit position, predates the renewal of the parties' most recent collective-bargaining agreement. The position, however, has been vacant since 2004 as a consequence of budgetary concerns and a low level of organizing activity. The previous Organizing Administrators maintained an office at the Employer's headquarters and were included in the Executive Department. They reported directly to the Executive Director, another position currently vacant, and were assigned to

develop the Employer's overall organizing strategies as well as coordinate "internal and external organizing" activities. In addition, the Petitioner asserts that the Organizing Administrator's role was to increase the Employer's membership base. During the period that the Organizing Administrator's position remained vacant, the job duties were distributed to the Operations Directors, whom the parties stipulated are supervisors within the meaning of Section 2(11) of the Act.

The Operations Directors report directly to the President and work at the headquarters location. Their primary responsibility is to oversee contract administration. They review and approve the Staff Representatives' expense reports, oversee assignments of members to state agencies, and travel to and direct Staff Representatives' organizing activities. The record discloses that Operations Directors hold weekly meetings to discuss assignment and placement of individuals under their supervision, but they also are involved in other projects, such as assisting the Internal Organizing Task Force in developing its recommendations, working with Task Force members by providing information about internal and external organizing around the country, and analyzing organizing models adopted by other unions. Like other managerial or supervisory staff, the Operations Directors typically receive a \$50 weekly per diem, a gas card, reimbursement of cell phone expenses, and 20 cents a mile when they travel. ^{2/}

IOPMM:

Aryeh Alex, a former AFSCME International employee, was offered the IOPMM position about December 17, 2009 and began working in the position on January 4, 2010. The record discloses that Alex was advised that the IOPMM was a management level position, and it was anticipated that he would be involved in future collective bargaining negotiations with the Petitioner. The IOPMM job description that was placed in the record is designated as a draft document. Like the Organizing Administrator, the IOPMM reports to the Executive Director; however, because that position is currently vacant, the IOPMM reports directly to the President. The IOPMM job description indicates that the position is within the Governmental Affairs (Internal Organizing/Political Mobilizing) department and is responsible for developing and implementing the Employer's Internal Organizing and Political Mobilizing strategies.

With respect to the supervision of his activities, Alex testified that his office is located at headquarters in close proximity to that of President Parks and they interact on a daily basis. In this connection, the record reflects that he submits "eye-opener" or biweekly reports about his department's activities directly to the President. In addition, the President reviews and approves Alex's expenses, activity reports and personal leave requests. In regard to his duties and responsibilities, Alex testified that he has been assigned to develop (subject to the President's final approval) his department's annual budget. In addition, he has taken part in initial discussions with AFSCME affiliates about expansion of organizing campaigns and has begun to develop the Next Wave plan focusing on how staff can work effectively with leadership to develop new leaders within the Employer. Further, Alex has taken over the PEOPLE program (as part of the political program) from Operations Director Wyngaard and, in an effort to meet

^{2/} All personnel, whether included or excluded from the bargaining unit, enjoy the same dental and healthcare benefits, life insurance and sick leave. Vacation time accrues at a higher rate for management.

AFSCME 21st Century goals, is currently restructuring the program and developing a plan to increase PEOPLE contributor membership.

Alex testified since mid-January 2010, that he has supervised PEOPLE/Legislative Liaison Sharon Reese, a bargaining unit employee. Regarding Reese's job duties, the record reflects that Alex spoke with Operations Director Wyngaard, Reese's former supervisor, and Reese to determine what assignments Reese had previously done and what her future assignments would involve. Thereafter, Alex drafted a revised job description for Reese, provided the description to Human Resources Manager Hillis, and met with Petitioner's representative Lynn Belcher, Reese and Hillis, to discuss Reese's revised job description. The record does not reflect what was the outcome of their meetings and as of the date of the hearing, the revised job description had not been finalized.

The record reflects that Alex has assigned work to Reese; specifically, he has met with Reese to discuss daily, weekly, and monthly goals he wants her to accomplish. In addition, he has scheduled follow-up meetings with Reese to confirm she has accomplished her goals and requested that Reese provide him with weekly and bi-weekly written status reports on her progress. The record also reflects that Alex approves Reese's request for time off, her weekly time sheets, and expense reports. According to the record, Jenisa Little, a Project Staff worker,^{3/} is assigned to work in Alex's department. Alex and Operations Director Wyngaard jointly "supervise" Little. Alex testified he has given assignments to Little and has met with her on a daily basis to confirm she is completing the work. Under Alex's supervision, Little has helped with the Next Wave plan by contacting chapter leaders of PEOPLE and Next Wave. Although Alex has not had the occasion to exercise any disciplinary authority, he stated that he is responsible for conducting pre-disciplinary investigations and representing the Employer during the first stage of the parties' contractual grievance procedure. As of the date of the hearing, Alex had not been involved in any collective bargaining with the Petitioner, but was assigned to represent the Employer in a future labor-management meeting.^{4/}

With respect to Alex's other duties, the record shows that Alex began working on external organizing activities and plans with Director of Administrative Services and Health Care Policy, Bowshier and Operations Director Wyngaard. In addition, President Parks appointed Alex to a group affiliated with AFSCME Ohio Council 8 to begin discussions on joint organizing and how to expand the Employer's membership. Alex testified that he has worked with the Operations Directors to implement new field strategies for Staff Representatives, including strategies to involve Staff Representatives in new member orientation. In addition, he has attended the Operations Directors' weekly meetings regarding assignments and placement of individuals under their supervision. During one meeting, Alex discussed updating the Employer's field and political action activities undertaken by Staff Representatives. Alex testified that he will likely manage these activities once they are put into effect.

^{3/} Project Staff are OCSEA members (State employees) who work for the Employer on a temporary basis. The State pays the employees' wages and OCSEA reimburses the state.

^{4/} The date of the labor-management meeting had not been finalized.

As IOPMM, Alex drafted a political mission statement for submission to the Policy Team, Government Affairs Committee, and Board of Directors which sought to clarify the Employer's mission statement and guidelines. Alex testified that he has attended the only Board meeting held since his appointment and submitted a written report to the Board detailing his department's current and future activities, including Reese's projects. Alex also serves on the Employer's Government Affairs Subcommittee, which deals with legislation, political agenda and early endorsement of political candidates. Alex testified that no bargaining unit members were present at either the Board of Directors or Government Affairs Subcommittee meeting. The record also shows that Alex is responsible for briefing the Employer's chapters and leadership about political and internal issues that are relevant to the Employer, such as pension reform or the upcoming 2010 elections. Alex has attended meetings held by the Policy Team where he made recommendations concerning the Employer's political platform^{5/} and discussed the Employer plans to confirm that employees of the casino control commission will be eligible for membership with the Employer.

Like the Operations Directors and other supervisory/managerial staff, the IOPMM receives three vacation weeks per year, a gas card, mileage reimbursement, and a \$50 weekly per diem. The IOPMM's salary, which is not the highest in the Employer's organization, starts at \$61,847 and is currently limited to a maximum of \$68,865.

Staff Representatives:

The Staff Representatives are involved in both internal and external organizing for the Employer. They meet with new and potential members and campaign for political candidates. The Staff Representatives negotiate and administer the Employer's collective-bargaining agreements. They also assist members by attending chapter meetings, representing members in grievance hearings or arbitration, attending pre-disciplinary hearings, and participating as co-chairs on labor-management committees with the State of Ohio. Staff Representatives also conduct organizing campaigns, picketing and strikes, and conduct basic steward training. The record discloses that some Staff Representatives work with the District Grassroots Committees associated with the districts of the Employer. Staff Representatives work from home and are out in the field on a daily basis. Although Staff Representatives are often assigned to work together to coordinate political activities, they do not supervise employees and do not attend Board of Directors meetings or Government Affairs Subcommittee meetings unless specifically invited. Staff Representatives receive a monthly car allowance of \$470, monthly per diem of \$200, a telephone business credit card, and, if assigned a service area, a gasoline credit card for \$225 with paid insurance for Employer-owned vehicles. Salaries for the position range from \$50,006 (step one) up to \$60,187 (step five).

Education Representative:

The Education Representative, who reports directly to the Director of Education, is in charge of developing and conducting educational programs for Union leadership and staff and assists the Director of Education as assigned. The record shows that this position interacts

^{5/} The political platform concerns the Employer's principles regarding goals, public services, and involving members in union activities.

frequently with Staff Representatives, conducts advanced steward training, and has drafted curricula that the Employer uses in training its employees. The Education Representative was involved with the International Union Task Force. The Education Representative receives a \$470 monthly car allowance, \$200 monthly per diem, and a gasoline credit card of \$225 when using Employer-owned automobiles. As of July 1, 2009, the Education Representative received a starting salary of \$54,019 (step one) that concludes at \$64,050 (step five).

III. LEGAL FRAMEWORK

Supervisors are specifically excluded from the Act's definition of "employee" by Section 2(11) of the Act which defines a "supervisor" as:

Any individual having the authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

To meet the definition of a supervisor set forth in Section 2(11) of the Act, a person needs to possess only one of the 12 specific criteria listed, or the authority to effectively recommend such action. *Ohio Power Co. v. NLRB*, 176 F.2d 385 (6th Cir. 1949), cert. denied, 338 U.S. 899 (1949). The exercise of that authority, however, must involve the use of independent judgment. *Harborside Healthcare, Inc.*, 330 NLRB 1334 (2000). Thus, the exercise of "supervisory authority" in merely a routine, clerical, perfunctory or sporadic manner does not confer supervisory status. *Chrome Deposit Corp.*, 323 NLRB 961, 963 (1997); *Feralloy West Corp. and Pohng Steel America*, 277 NLRB 1083, 1084 (1985).

Possession of authority consistent with any of the indicia of Section 2(11) is sufficient to establish supervisory status, even if this authority has not yet been exercised. See, e.g., *Pepsi-Cola Co.*, 327 NLRB 1062, 1063 (1999); *Fred Meyer Alaska*, 334 NLRB 646, 649 at fn. 8 (2001). The absence of evidence that such authority has been exercised may, however, be probative of whether such authority exists. See, *Michigan Masonic Home*, 332 NLRB 1409, 1410 (2000); *Chevron U.S.A.*, 308 NLRB 59, 61 (1992).

In considering whether the putative supervisor involved here possess any of the supervisory authority set forth in Section 2(11) of the Act, I am mindful that in enacting this section of the Act, Congress emphasized its intention that only supervisory personnel vested with "genuine management prerogatives" should be considered supervisors, and not "straw bosses, leadmen, set-up men and other minor supervisory employees." *Chicago Metallic Corp.*, 273 NLRB 1677, 1688 (1985). Thus, the ability to give "some instructions or minor orders to other employees" does not confer supervisory status. *Id.* at 1689. Such "minor supervisory duties" do not deprive such individuals of the benefits of the Act. *NLRB v. Bell Aerospace Co.*, 416 U.S. 267, 280-281 (1974), quoting Sen. Rep. No. 105, 80th Cong. 1st Sess., at 4. In this regard, the Board has frequently warned against construing supervisory status too broadly because an

individual deemed to be a supervisor loses the protection of the Act. See, e.g., *Oakwood Healthcare, Inc.*, 348 NLRB 686, 688 (2006); *Vencor Hospital – Los Angeles*, 328 NLRB 1136, 1138 (1999); *Bozeman Deaconess Hospital*, 322 NLRB 1107, 1114 (1997).

Proving supervisory status is the burden of the party asserting that such status exists. *NLRB v. Kentucky River Community Care, Inc.*, 532 U.S. 706, 711-712 (2001); *Arlington Masonry Supply*, 339 NLRB 817, 818 (2003); *Dean & Deluca New York, Inc.*, 338 NLRB 1046, 1047 (2003). As a general matter, I note that for a party to satisfy the burden of proving supervisory status, it must do so by “a preponderance of the credible evidence.” *Dean & Deluca*, supra at 1047; *Star Trek: The Experience*, 334 NLRB 246, 251 (2001). The preponderance of the evidence standard requires the trier of fact “to believe that the existence of a fact is more probable than its non-existence before [he] may find in favor of the party who has the burden to persuade the [trier] of the fact’s existence.” *In re Winship*, 397 U.S. 358, 371-372 (1970). Accordingly, any lack of evidence in the record is construed against the party asserting supervisory status. See, *Williamette Industries, Inc.*, 336 NLRB 743 (2001); *Michigan Masonic Home*, 332 NLRB at 1409. Moreover, “[w]henver the evidence is in conflict or otherwise inconclusive on a particular indicia of supervisory authority, [the Board] will find that supervisory status has not been established, at least on the basis of those indicia.” *Phelps Community Medical Center*, 295 NLRB 486, 490 (1989). Consequently, mere inferences or conclusionary statements without detailed specific evidence of independent judgment are insufficient to establish supervisory status. *Sears, Roebuck & Co.*, 304 NLRB 193 (1991). The Board revisited the issue of supervisory status in *Oakwood Healthcare, Inc.*, 348 NLRB 686 (2006) and two companion cases, *Croft Metals, Inc.*, 348 NLRB 717 (2006) and *Goldencrest Healthcare Center*, 348 NLRB 727 (2006). In these decisions, the Board refined its analysis in assessing supervisory status in light of the Supreme Court’s decision in *Kentucky River*, supra. In *Oakwood*, the Board addressed the Supreme Court’s rejection of the Board’s definition of Section 2(11) in the healthcare industry as being overly narrow by adopting “definitions for the term ‘assign,’ ‘responsibly to direct,’ and ‘independent judgment’ as those terms are used in Section 2(11) of the Act.” *Oakwood*, supra. at 688.

With regard to the Section 2(11) criterion “assign,” the Board considered that this factor shares with other Section 2(11) criteria the “common trait of affecting a term or condition of employment” and determined to construe the term “assign” “to refer to the act of designating an employee to a place (such as a location, department, or wing), appointing an employee to a time (such as a shift or overtime period), or giving significant overall duties, i.e., tasks, to an employee.” *Id.* at 687. The Board reasoned that, “It follows that the decision or effective recommendation to affect one of these – place, time, or overall tasks – can be a supervisory function.” *Id.* The Board clarified that, “. . . choosing the order in which the employee will perform discrete tasks within those assignments (e.g., restocking toasters before coffeemakers) would not be indicative of exercising the authority to ‘assign.’” *Id.*

In *Oakwood*, the Board explained that, “responsible direction,” in contrast to “assignment,” can involve the delegation of discrete tasks as opposed to overall duties. 348 NLRB at 690-692. The Board reasoned, however that “for direction to be ‘responsible,’ the person directing and performing the oversight of the employee must be accountable for the performance of the task by the other, such that some adverse consequence may befall the one

providing the oversight if the tasks performed by the employees are not performed properly.” In clarifying the accountability element for “responsibly to direct” the Board noted that, “to establish accountability for purposes of responsible direction, it must be shown that the employer delegated to the putative supervisor the authority to direct the work and the authority to take corrective action if necessary. It also must be shown that there is a prospect of adverse consequences for the putative supervisor if he/she does not take these steps.” Id. at 692.

Assignment or responsible direction will, as noted above, produce a finding of supervisory status only if the exercise of independent judgment is involved. Independent judgment will be found where the alleged supervisor acts free from the control of others, is required to form an opinion by discerning and comparing data, and makes a decision not dictated by circumstances or company policy. Id. at pp. 692-694. Independent judgment requires that the decision “rise above the merely routine or clerical.” Ibid.

IV. ANALYSIS

IOPMM is a newly created position:

After considering the record as a whole, I find, contrary to the Employer’s assertion, the IOPMM to be a newly created position, rather than a modification of the pre-existing Organizing Administrator position. The evidence adduced at the hearing demonstrates that the job duties of the former Organizing Administrator and the current IOPMM are sufficiently distinct to support the conclusion that IOPMM is a new, rather than pre-existing position. In reaching my conclusion, I note that although the Employer provided a position description for the Organizing Administrator, both parties presented only a cursory summary of the actual activities in which Organizing Administrator was involved when the position was filled.

The record reflects that both the Organizing Administrator and the IOPMM positions are structured to report to the Executive Director and are allegedly non-bargaining unit/exempt positions. However, the Organizing Administrator, pursuant to its job description, was within the Executive Department while the IOPMM is included within Governmental Affairs (Internal Organizing/Political Mobilizing) Department. Although the Organizing Administrator was responsible for both internal and external organizing strategies and activities, the job description focuses primarily on membership organizing campaigns. Specifically, the Organizing Administrator worked with field operations and Employer leaders regarding organizing campaigns; with the Employer’s legal department in determining bargaining units; supervised staff assigned to organizing campaigns; worked with communications department to develop promotional materials and worked with the Education Director to develop member mobilization plans. In contrast, the IOPMM is primarily responsible for developing and implementing the Employer’s Internal Organizing and Political Mobilizing strategies and directly supervises the PEOPLE and Legislative Liaison as well as temporarily supervises Project Staff. Unlike the Organizing Administrator, the IOPMM focuses specifically on the Employer’s political mobilization and internal organizing plans by consulting with the President, the Board of Directors, District Councils, Assemblies, and Chapters; is involved with internal and external organizing policies and political action; manages recruitment and oversight of volunteers;

manages staff and project staff; develops and implements Next Wave initiatives; and is responsible for his department's budget and progress reports.

The Organizing Administrator position has remained vacant since about 2004 due to minimal organizing activity and budgetary concerns. Given the time between the last incumbent serving as Organizing Administrator and the implementation of IOPMM, and new legislation and policies which have arisen during that time period, the Employer substantially changed the job duties of the Organizing Administrator. Accordingly, I find the IOPMM to be a new, rather than pre-existing position. Under such circumstances, analysis of this issue pursuant to *Wallace-Murray Corp.*, 192 NLRB 1090 (1971) is unnecessary.

Supervisory Status of the IOPMM:

Although I find IOPMM to be a newly created job classification, in considering the record as a whole and the legal precedent described above, I find that the Employer has satisfied its burden of proving that IOPMM is a supervisor within the meaning of Section 2(11) of the Act and thus, cannot be accreted into the bargaining unit. In this regard, I find based on the record as a whole, that the IOPMM has the independent authority to assign work and discipline employees within the meaning of the Act. Regarding the assignment of work, the Board in *Oakwood* defined "assignment" as the act of designating an employee to a place, appointing an employee to a time, or giving significant overall tasks. See, 348 NLRB 686 at 689. In that same case, the Board found that a supervisor has authority to responsibly direct an employee when the individual decides, "what job shall be undertaken next or who shall do it . . . provided that direction is both 'responsible' . . . and carried out with independent judgment." See *Id.* at 691. Alex testified without contradiction that after PEOPLE/Legislative Liaison Reese was assigned to his supervision, he consulted with Reese and her former supervisor, Operations Director Wyngaard, regarding Reese's past and current job duties, and took it upon himself to revise the position's current job description. He meets with Reese on a daily basis to review her current assignments and future "job goals." He has granted Reese time off. He is also responsible for overseeing the work of a shared Project Staff employee. In addition, Alex anticipates that when field and political action activities commence, he will manage Staff Representatives involved in those activities. Therefore, I find based upon the testimony provided by both parties at the hearing that the IOPMM has the authority to assign work to and responsibly direct bargaining unit employees.

With respect to discipline, the evidence must establish that the disputed supervisor's participation in the disciplinary procedure leads to a personnel action without independent review or investigation by other managerial or supervisory personnel. See, *Franklin Home Health Agency*, 337 NLRB 826, 830 (2002) (citing *Beverly Health & Rehabilitation Services, Inc.*, 335 NLRB 635 (2001)). In this regard, the Board has held that the mere exercise of a reporting function that does not automatically lead to discipline or adverse action against an employee does not establish supervisory authority. See, *Illinois Veterans Home at Anna L.P.*, 323 NLRB 890 (1997); *Ten Broeck Commons*, 320 NLRB 806, 812 (1996). I note that there is no evidence in the record regarding the Employer's disciplinary system, or even if it has one. However, Alex testified without contradiction or ambiguity that he has the authority to issue discipline to PEOPLE/Legislative Liaison Reese, even though as of the date of the hearing he

had not had an occasion to do so. Alex also testified without contradiction that should the occasion occur, he will handle pre-disciplinary investigations and serve as the Employer's representative with respect to employees assigned to his group in the initial steps of the grievance procedure. Lack of an occasion to discipline is not indicative that the IOPMM does not possess this authority. I find that there is sufficient evidence to indicate the IOPMM has the authority to issue discipline.

In addition, there are secondary indicia that support my conclusions about IOPMM's supervisory status. Thus, the record reflects that Alex has met with Operations Directors, the Board of Directors, the Policy Team, and the Government Affairs Subcommittee, all managerial groups, to discuss issues related to the Employer. There is record testimony that Alex will participate on behalf of the Employer in negotiations for a subsequent collective-bargaining agreement. Further Alex has been asked to attend a labor-management meeting. Although the Employer testified that the IOPMM is not the highest paid position at the Employer, the record evidence indicates that the IOPMM receives a salary higher than both Staff Representatives and the Education Representative. Based on the foregoing, I find the IOPMM to possess sufficient supervisory authority to warrant his exclusion from the Petitioner's bargaining unit.

V. CONCLUSION

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction in this case.
3. The Petitioner is a labor organization within the meaning of the Act.
4. The bargaining unit currently represented by the Petitioner shall not be clarified as requested by the Petitioner.

VI. ORDER

IT IS HEREBY ORDERED that the petition filed herein be, and it hereby is, dismissed.

VII. RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570-0001. This request

must be received by the Board in Washington by **April 22, 2010**. The request may be filed electronically through E-Gov on the Agency's website, www.nlr.gov,^{6/} but may not be filed by facsimile.

Dated at Cincinnati, Ohio this 8th day of April 2010.

Gary W. Muffley, Regional Director
Region 9, National Labor Relations Board
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Classification Index

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^{6/} To file the request for review electronically, go to www.nlr.gov and select the **E-Gov** tab. Then click on the **E-Filing** link on the menu, and follow the detailed instructions. Guidance for E-filing is contained in the attachment supplied with the Regional Office's initial correspondence on this matter and is also located under "E-Gov" on the Agency's website, www.nlr.gov.